

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Crim. No. 09-341 (8) (RHK/JSM)

Plaintiff,

v.

MEMORANDUM AND ORDER

Olayemi Lateef Banjoko,

Defendant.

Defendant has filed a notice of appeal, (Docket No. 515), seeking direct appellate review of his conviction and sentence in this matter. The case is presently before the Court on Defendant's application for leave to proceed in forma pauperis, ("IFP"), on appeal. (Docket No. 522.)

To qualify for IFP status on appeal, an appellant must submit financial information demonstrating that he or she is indigent. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Even if the appellant is found to be indigent, however, IFP status will be denied if the Court finds that his or her appeal is not taken "in good faith." 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). To determine whether an appeal is taken in good faith, the Court must decide whether the claims to be decided on appeal are factually or legally frivolous. Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim is frivolous, and cannot provide the basis for an appeal taken in good faith, "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

In this case, Defendant's IFP application indicates that he has no income at this time, except for occasional gifts, and the nominal wages (\$0.12 per hour) that he earns from his prison job. The IFP application also indicates that Defendant has no assets that could be used to pay for his appeal. Based on the representations made in Defendant's IFP application, the Court finds that he is financially eligible for IFP status on appeal.

Although the Court remains satisfied that Defendant was properly convicted and properly sentenced, his appeal is not deemed to be “frivolous,” as that term has been defined by the Supreme Court. Therefore, Defendant’s appeal is found to be taken “in good faith” for purposes 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), and his IFP application will be granted.

Based upon the foregoing, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

Defendant’s application to proceed in forma pauperis on appeal, (Docket No. 522), is GRANTED.

Dated: February 8, 2013

s/Richard H. Kyle
RICHARD H. KYLE
United States District Court Judge